

ITEL

December 30, 1986

No. _____

Date JAN 8 1987

Fee \$ 20.00

ICC Washington, D.C.

Itel Rail Corporation55 Francisco Street
San Francisco, California 94133
(415) 984-4000Hon. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423RECORDATION NO. 1 5146 Filed & Recorded

JAN 8 1987 11-25 AM

INTERSTATE COMMERCE COMMISSION

Re: **Sublease Agreement, dated December 15, 1986, between Green Bay and Western Railroad Company and McCloud River Railroad Company**

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 USC §11303(a), along with a check in the amount of \$20 covering the recordation fee.

Please record this Sublease Agreement under a new recordation number and cross-index same with the Lease Agreement dated March 8, 1979, between Itel Corporation, Rail Division, and Green Bay and Western Railroad Company, which was filed with the ICC on May 10, 1979 and given Recordation No. 10362.

The parties to the aforementioned instrument are listed below:

Green Bay and Western Railroad Company (Sublessor)
P.O. Box 2507
Green Bay, Wisconsin 54306

McCloud River Railroad Company (Sublessee)
P.O. Drawer A
McCloud, California 96057

The equipment covered by this Sublease Agreement are seventy-five (75) 50'7", 70-ton, Plate C, XP boxcars bearing reporting marks MR 178882-178956.

Please return to the undersigned the stamped counterparts not required for filing purposes, along with the fee receipt and a letter from the ICC acknowledging this filing.

Very truly yours,

pschumacker

Patricia Schumacker
Legal Department

:ps
Enclosures

cc: Howard L. Chabner, Esq.
Marianne Ledda

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RECORDATION NO. 1 5146 Filed & Recorded

JAN 8 1987 11:25 AM

INTERSTATE COMMERCE COMMISSION

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (the "Sublease") is made as of this 15th day of December, 1986, between GREEN BAY & WESTERN RAILROAD COMPANY, a Wisconsin corporation, 2155 Hutson Road, Green Bay, Wisconsin 54303, as the sublessor ("Sublessor") and McCLOUD RIVER RAILROAD COMPANY, a California corporation, 325 Main, McCloud, California 96057, as the sublessee ("Sublessee").

1. Scope of Sublease

- A. Sublessor agrees to lease to Sublessee and Sublessee agrees to lease from Sublessor, upon the terms and conditions set forth herein, items of equipment of the number, type, construction and other description set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Sublease. The word "Schedule" as used herein includes the Equipment Schedule or Equipment Schedules executed herewith and any additional Equipment Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Sublease. The scheduled items of equipment are hereinafter called collectively the "Cars" and individually a "Car."
- B. It is the intent of the parties to this Sublease that Sublessor shall at all times be and remain the sublessor of all Cars. Sublessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

- A. This Sublease shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of the Sublease with respect to each Car described on each Schedule shall commence at 12:01 a.m. on the date and at the location that such Car is remarked pursuant to Subsection 3.A., and shall expire as to all of the Cars described on each Schedule, five (5) years from the earlier of (a) the date on which the last Car on such Schedule was remarked, or (b) ninety (90) days after the first Car on such Schedule was remarked (the "Initial Term").
- B. If this Sublease has not been terminated early and no unremedied default has occurred pursuant to Section 9, the Sublease shall automatically be extended for not more than five (5) consecutive periods of twelve (12) months each (the "Extended Term(s)") with respect to all of the Cars described on each Schedule, provided,

however, that Sublessor or Sublessee may terminate this Sublease at the end of the Initial Term or any Extended Term as to all, but not fewer than all, of the Cars on the Schedules by written notice delivered to the other not less than twelve (12) months prior to the end of the Initial Term or any Extended Term.

3. Supply Provisions

- A.** Sublessee hereby approves the specifications of the Cars delivered to it by Sublessor. Sublessor shall, at Sublessee's expense, remark the Cars with the railroad markings of Sublessee in compliance with all applicable regulations. Each Car shall be deemed delivered and subject to the terms and provisions of this Sublease at 12:01 a.m. on the date and at the location such Car is remarked ("Delivery"). After the Cars have been remarked, the Cars shall be moved to Sublessee's railroad line at no cost to Sublessee as soon as is consistent with mutual convenience and economy. Notwithstanding that Sublessee may not have immediate physical possession of the Cars leased hereunder, Sublessee agrees to pay the rent set forth in this Sublease. To move the Cars to Sublessee's railroad line and to ensure optimal use of the Cars after the Initial Loading (as hereinafter defined), Sublessor agrees to assist Sublessee in monitoring Car movements and, when deemed necessary by Sublessee and Sublessor, to assist in the issuance of movement orders with respect to such Cars to other railroad lines in accordance with Interstate Commerce Commission ("ICC") rules and Association of American Railroads ("AAR") interchange rules adopted by the AAR Mechanical Division, Operations and Maintenance Department ("Interchange Rules"). If Sublessor incurs expenses in having other railroads move Cars in accordance with this Section with Sublessee's request or approval, except for any expenses incurred in the initial delivery of such Cars to Sublessee's railroad line pursuant to this Section, Sublessee shall reimburse Sublessor for such expenses within ten (10) days of receipt of an invoice from Sublessor. For the purposes hereof, the term "Initial Loading" as to each Car, shall be the earlier to occur of either: 1) the date such Car shall have been loaded off Sublessee's railroad line with the first load of freight; or 2) the thirty-first (31st) day after such Car is received on Sublessee's lines pursuant to this Section.
- B.** Sublessee shall load the Cars leased from Sublessor prior to loading any boxcars leased by or assigned to Sublessee from other parties subsequent to the date of this Sublease, purchased by Sublessee subsequent to the date of this Sublease, or interchanged from other railroads; provided, however, that this shall in no event prevent or prohibit Sublessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.
- C.** Additional Cars shall be leased from Sublessor by Sublessee only upon the mutual agreement of the parties. During the term of this Sublease, Sublessor may, at its expense, replace any or all of the

Cars with similar boxcars upon prior written notice from Sublessor to Sublessee; provided, however, that any such replacement shall not prevent or prohibit Sublessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.

4. Record Keeping

- A.** Sublessor shall, at its expense and with Sublessee's assistance, prepare and file, with respect to the Cars, all documents relating to the registration, maintenance and record keeping functions normally performed by a railroad with respect to railroad equipment of the type subject to this Sublease. Such matters shall include, but are not limited to: (i) preparation of appropriate AAR interchange agreements with respect to the Cars; (ii) registration of the Cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) preparation of any reports as may be required from time to time by the ICC and any other regulatory agencies with respect to the Cars. Sublessee hereby authorizes Itel Rail Corporation ("Itel Rail") to be the subscriber to the car hire exchange tape, Train 62 Junction Advices, and the Train II, (65, 67 and 80) Location Advices with respect to the Cars and agrees to execute any documents necessary for such authorization.
- B.** Sublessor shall perform all record keeping functions relating to the use of the Cars by Sublessee and other railroads, including but not limited to, car hire reconciliation, collection and receipt of Revenues (as defined in Section 7 hereinbelow) from other railroad companies, record keeping associated with maintenance and repair, and billing in accordance with the Interchange Rules. Sublessor requests and Sublessee hereby agrees and authorizes Itel Rail to immediately upon receipt from other railroads of any Revenues in the form of a draft, check or other instrument payable to Sublessee, endorse and deposit such draft, check or other instrument into Itel Rail's account and to retain such Revenues as set forth in Subsection 7.D. All record keeping performed by Sublessor hereunder and all records of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Sublessor in a form suitable for reasonable inspection by Sublessee from time to time during Sublessor's regular business hours.
- C.** Upon Sublessor's reasonable request, Sublessee shall supply Sublessor with daily telephone reports of the number of Cars in Sublessee's possession or control. Sublessee shall, within ten (10) days after the close of each calendar month, supply Sublessor with copies of Sublessee's interchange records with respect to the Cars interchanged to and from Sublessee's railroad line. Upon Sublessor's reasonable request, Sublessee shall promptly provide Sublessor with records of Sublessee's car hire payables. In the event Sublessee fails to provide Sublessor with records of car hire payables, and as a result, a user or handling railroad

refuses to pay any Revenues owed, Sublessee shall, within ten (10) days after Sublessor's request, pay to Sublessor such unpaid Revenues. Sublessor has the right to offset against Sublessee's revenue sharing portion set forth in Subsection 7.C., any sums arising out of this Sublease which are owed by Sublessee to Sublessor but which remain unpaid.

- D. If Sublessee acquires or leases or has acquired or leased additional equipment bearing the reporting marks of Sublessee from a party other than Sublessor ("Other Equipment"), Sublessor shall perform car hire accounting for the Other Equipment. Sublessor and Sublessee shall enter into a car hire service agreement ("Car Hire Agreement") governing Sublessor's performance of car hire accounting for the Other Equipment. Under such Car Hire Agreement, Sublessor shall, on behalf of Sublessee, receive car hire rental and other payments relating to the use and handling of the Other Equipment by other railroads ("Funds") and shall deposit the Funds into an Agency Bank Account for the purpose of segregating the Funds from the Revenues (as defined in Section 7 hereinbelow) relating to the Cars so as to ensure that the interests of both Sublessor and Sublessee are protected. Upon entering into such Car Hire Agreement, Sublessee shall pay Sublessor on a monthly basis a fee which is mutually agreeable to Sublessor and Sublessee.

5. Maintenance, Tax and Insurance

- A. Except as otherwise provided herein, Sublessor shall, at its expense, perform or have performed all inspections of, maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules, provided, however, that such repair, maintenance and servicing shall be performed at Sublessee's expense in the event it was occasioned by the fault of Sublessee, or arises in those instances in which the Interchange Rules would assign responsibility to Sublessee for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. Sublessee shall, at its expense, inspect all Cars interchanged to Sublessee to insure that such Cars are in good working order and condition and Sublessee shall be liable to Sublessor for any repairs required for damage not noted at the time of interchange. Sublessee shall use its best efforts to minimize any damages to the Cars which may be caused by any shipper. With respect to the Cars, any repairs performed by Sublessee at Sublessor's expense shall be at a labor rate not to exceed the prevailing AAR Labor Rate unless a different labor rate is mutually agreed upon in writing by the parties hereto.
- B. Sublessor shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules. Sublessee may make running repairs to facilitate continued immediate use of each Car, but shall not

otherwise make any repairs, alterations, improvements, or additions to any Car without Sublessor's prior written consent. Sublessee shall be liable to Sublessor for any revenues lost due to any unauthorized repair, alteration, improvement or addition. Title to any alteration, improvement or addition shall be and remain with Sublessor. Sublessor shall have the right to perform certain Repairs, as hereinafter defined, to the Cars at a location on Sublessee's property which is mutually agreeable to Sublessor and Sublessee. Repairs ("Repairs") shall be of the type that Sublessor determines Sublessee would not normally perform or of the type that Sublessor determines would normally precipitate movement of such Cars to a repair facility. Sublessor shall notify Sublessee at least twenty-four (24) hours in advance of performing such Repairs.

- C. Sublessee shall be responsible for the Cars: (i) while in Sublessee's possession or control; and (ii) in the same manner and under the same circumstances that Sublessee is responsible under the Interchange Rules for similar equipment not owned by Sublessee. Sublessee shall, at all times while this Sublease is in effect, at its own expense, cause to be carried and maintained: (i) all-risk, physical loss or damage insurance with respect to the Cars while on Sublessee's tracks or in Sublessee's care, custody or control; and (ii) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as are satisfactory to the Sublessor. All insurance shall be taken out in the name of Sublessee and shall name Sublessor, Heller Financial, Inc., and any assignee of Sublessor as additional named insureds and shall also list Sublessor, Heller Financial, Inc., and any assignee of Sublessor as loss-payees on the insurance policies. Said policies shall provide that Sublessor, Heller Financial, Inc., and any assignee of Sublessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. In the event that Sublessee fails to place insurance, or said insurance expires, Sublessor has the right to purchase insurance to protect all interested parties and Sublessee shall pay the cost thereof. With respect to the additional insureds, Sublessee's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. Sublessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by the Sublessee.
- D. Each policy obtained by Sublessee pursuant to this Section shall be in accordance with the above terms and conditions, and such terms and conditions shall be set forth on the Certificate of Insurance provided to the Sublessor pursuant to this Subsection. Sublessee shall furnish to Sublessor concurrently with execution hereof, and within thirty (30) days of receipt of a written request from Sublessor, and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of

Insurance evidencing the aforesaid insurance. Sublessee shall provide Sublessor a Certified Copy of each insurance policy upon written request. In the event that, and only with Sublessor's written approval, Sublessee shall be permitted to self-insure on any specified interests, the Sublessee hereby warrants to place the Sublessor in the same position as if the relating insurance had been effected.

- E. Sublessor agrees to reimburse Sublessee, within thirty (30) days from Sublessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by the Sublessee resulting from: 1) ad valorem tax assessments on the Cars; and 2) any assessment, levy or impost relating to each Car, the Sublease or the delivery of the Cars which remained unpaid as of the date of the delivery of the Cars to Sublessee or which are assessed, levied or imposed during the term of this Sublease, except taxes on income imposed on Sublessee, gross receipts or sales or use tax imposed on the mileage charges and car hire revenue or sale or lease of the Cars. Sublessor and Sublessee will comply with all state and local laws requiring filing of ad valorem tax returns associated with the Cars. Notwithstanding any portion of this Section, Sublessor shall not be responsible for penalty or interest assessments resulting from Sublessee's failure to comply with any regulation or statute of any taxing or assessing authority. Sublessee shall forward to Sublessor upon receipt all correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable by Sublessor. Sublessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Sublessor shall assume full responsibility for all expenses, including legal fees, resulting from such contest.

6. Storage

As long as there is sufficient room on Sublessee's railroad tracks, Sublessee shall, at its expense and if deemed necessary by Sublessor, store the Cars on its railroad tracks. In the event that Sublessee's capacity to store any or all of the Cars on Sublessee's railroad tracks is impaired at any time, then Sublessee shall be responsible for the following with respect to each Car stored: (i) all reasonable transportation costs incurred to move the Cars to a storage location; (ii) all reasonable transportation costs incurred in removing the Cars from the storage location; and (iii) the actual costs incurred for the storage. If Sublessor pays for any costs referred to in this Section, Sublessee shall reimburse Sublessor for such cost within ten (10) days from Sublessee's receipt of Sublessor's invoice. Sublessor shall assist Sublessee so as to minimize Sublessee's exposure under this Section.

7. Rent

A. Definitions

(i) "Revenues" is defined as

such amounts.

(ii) The "Utilization Rate" of the Cars during any period shall

(iii) The "Base Rent" is defined as the sum equal to the Revenues which the Cars would have earned in the aggregate

B. Sublessor shall receive all Revenues earned by each Car prior to its Initial Loading. Each Car delivered pursuant to Subsection 3.A. shall become subject to the rental calculation under Subsection 7.C. upon the Initial Loading of such Car.

C. Sublessee agrees to pay the following rent to Sublessor for the use of the Cars:

(i) In the event Revenues earned in any calendar year or applicable portion thereof are equal to or less than the Base Rent, Sublessor shall retain a sum equal to

(ii) In the event Revenues earned in any calendar year or applicable portion thereof exceed the Base Rent, Sublessor shall retain an amount equal to the Base Rent plus an amount equal to

of all Revenues received in excess of

D. The calculations required in Subsection 7.C shall be made within five (5) months after the end of each calendar year ("Final Calculations"). However, Sublessor shall, prior to making such calculations, retain the Revenues and other payments received by it on behalf of Sublessee. Further, since the parties desire to determine on a quarterly year-to-date basis the approximate amounts owed under Subsection 7.C., Sublessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis the amount due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation,

provided, however, that within twenty (20) days following the Final Calculation, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.

- E. If, with respect to any calendar quarter or quarters, Revenues received by Sublessor are less than the Revenues earned by the Cars at _____, Sublessor may, at any time, at its option and upon not less than ten (10) days prior written notice to Sublessee, terminate this Sublease as to such Cars as Sublessor shall determine; provided, however, that Sublessee may, at its option, within ten (10) days of receipt of such notice from Sublessor, void such termination notice by paying to Sublessor an amount equal to the difference between actual Revenues for such calendar quarter or quarters and the Revenues had the Utilization been _____ for such calendar quarter or quarters.
- F. If, subsequent to the Initial Loading, any Car remains on Sublessee's railroad lines for more than seven (7) consecutive days, excluding those days such Car is undergoing servicing, repair or alteration as provided for in Section 5 unless such servicing, repair or alteration was occasioned by the fault of Sublessee, Sublessor may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Sublease as to such Car and take possession of such Car on Sublessee's railroad tracks. If any such Car has remained on Sublessee's railroad tracks for more than seven (7) consecutive days because Sublessee has not given preference to the Cars as specified in Subsection 3.B., Sublessee shall be liable for and remit to Sublessor an amount equal to the Revenues which would have been generated if such Car had been in the physical possession and use of another railroad for the entire period during which such Car is on Sublessee's railroad line.
- G. In the event that Sublessor shall receive Revenues for the use of such Cars during any calendar quarter under this Sublease that are lower in amount than what would otherwise be due for the same service using the hourly and mileage car hire rates prescribed for excluded boxcars under the ICC decision in ICC Ex Parte No. 346 (Sub-No.19) served September 12, 1986, set forth in the Appendix to such decision in paragraph (C)(3) of 49 C.F.R. 1039.14, whether as a result of a bilateral agreement entered into by Sublessee or otherwise, Sublessor shall have the option to initiate negotiations for the purpose of negotiating a new lease agreement. If a new lease agreement cannot be mutually agreed upon, the Sublease shall remain in effect, provided, however, that Sublessor may, at its option and upon not less than ten (10) days' notice, terminate the Sublease as to any number of Cars as Sublessor shall determine.
- H. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Sublease on the date

car hire ceased as set forth in the aforementioned Rules 7 and 8. Sublessor may, at its expense, replace any destroyed Car with similar equipment upon prior written notice from Sublessor to Sublessee.

- I. If any Car, while in the possession of Sublessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Car, Sublessee shall notify Sublessor within sixty (60) days following the date of the occurrence of such damage ("Damage Date"). If Sublessee fails to so notify Sublessor within sixty (60) days of the Damage Date, Sublessor has the right to engage an independent appraiser to inspect such Car to determine the extent of such damage. Regardless of whether or not Sublessee has notified Sublessor of the damage pursuant to this Subsection, Sublessee shall remit to Sublessor an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Sublessor.
- J. Any agreement between Sublessee and any other party with respect to the Cars ("Third Party Agreement(s)") shall be null and void without Sublessor's prior written approval.
- K. Sublessor and Sublessee agree to cooperate with and to assist each other in any reasonable manner requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Cars, provided, however, that this shall not affect their respective obligations under this Section 7.

8. Possession and Use

- A. So long as Sublessee shall not be in default under this Sublease, Sublessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Sublease and in the manner and to the extent the Cars are customarily used in the railroad freight business. However, Sublessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement pursuant to which Sublessor's obligations thereunder are or become secured by the Cars which are the subject of this Sublease. Accordingly, following notice to Sublessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Sublease), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party.
- B. Sublessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers

having power to regulate or supervise the use of such property, except that either Sublessor or Sublessee may in good faith and by appropriate proceedings, contest the application of any such act, rule, regulation or order in any reasonable manner at the expense of the contesting party.

- C. The use of the Cars shall be limited to use by a rail common carrier and the Cars shall always bear the reporting marks of a rail common carrier. During the term of this Sublease, the Cars shall at all times be registered in the Official Railway Equipment Register and the UMLER.
- D. Sublessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising through it, on, or with respect to the Cars or any interest therein, or in this Sublease or Schedule thereto, except those created for the benefit of Irel Rail or any owner or secured party referred to in Subsection 8.A. hereinabove. Sublessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

9. Default

- A. The occurrence of any of the following events shall be an event of default:
 - (i) The nonpayment by Sublessee of any sum required herein to be paid by Sublessee within ten (10) days after the date any such payment is due;
 - (ii) The breach by Sublessee of any other term, covenant, or condition of this Sublease, which is not cured within ten (10) days thereafter;
 - (iii) The filing by or against the Sublessee of any petition or the initiation by or against the Sublessee of any proceeding: a) for any relief which includes, or might result in, any modification of the obligations of the Sublessee hereunder; or b) under any bankruptcy, reorganization, receivership, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of indebtedness, or extensions of indebtedness;
 - (iv) The subjection of any of Sublessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency;

- (v) Any action by Sublessee to discontinue rail service on all or a portion of its track or to abandon any of its rail properties.

B. Upon the occurrence of any event of default hereunder, without limiting Sublessor's rights and remedies otherwise provided by law which shall be available to Sublessor in addition to the following rights and remedies (no right or remedy of Sublessor being exclusive but all such rights and remedies being available at all times to Sublessor and Sublessor in any case being entitled to recover all costs, expenses and attorneys' fees incurred by Sublessor in enforcing its rights and remedies hereunder), Sublessor may, at its option, terminate this Sublease and recover damages and/or may:

- (i) Proceed by any lawful means to enforce performance by Sublessee of this Sublease or to recover damages for a breach hereof, and/or
- (ii) By notice in writing to Sublessee, terminate Sublessee's right of possession and use of the Cars, whereupon all right and interest of Sublessee in the Cars shall terminate; and thereupon Sublessor may enter upon any premises where the Cars may be located and take possession of the Cars and henceforth hold, possess and enjoy the same free from any right of Sublessee. Sublessor shall, in addition, have the right to recover from Sublessee any and all rental amounts which under the terms of this Sublease may then be due or which may have accrued to that date, together with Sublessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof.

10. Expiration or Early Termination

A. Expiration

Upon the expiration of this Sublease with respect to any Car, Sublessee shall promptly return such Car to Sublessor as follows:

- (i) If some or all of the Cars are to be delivered to Sublessor at Sublessee's railroad tracks, Sublessee shall be responsible for any transportation costs incurred in moving such Cars to the Sublessee's railroad tracks subsequent to the time of expiration. Sublessee shall, at Sublessor's option, provide, with respect to any Car described on each Schedule which is either on the Sublessee's railroad tracks at the time of expiration or is subsequently returned to Sublessee's railroad tracks, up to one hundred twenty (120) days free storage on its railroad tracks from either the date of expiration or the date the last Car on such Schedule is returned to Sublessee's railroad line subsequent to the time of expiration, whichever date is later.

- (ii) At the option of Sublessor, either Sublessee or a contractor chosen by Sublessor shall, at Sublessee's expense, remark the Cars as set forth in Subsection 10.C. of this Sublease. Sublessee shall not remove Sublessee's railroad marks from any Car without the prior written consent of Sublessor. After remarking, Sublessee shall, at Sublessor's option, use its best efforts to load the Cars with freight and deliver them to a connecting carrier for shipment.
- (iii) If some or all of the Cars are to be delivered to Sublessor at a location other than Sublessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by Sublessor. Sublessee shall bear the expense of remarking such Cars.

B. Early Termination

Upon the early termination of this Sublease with respect to any Car, whether pursuant to Section 9, Subsection 7.E. or Subsection 7.F. hereof, Sublessee shall promptly return such Car to Sublessor as follows:

- (i) If some or all of the Cars are to be delivered to Sublessor at Sublessee's railroad tracks, Sublessee shall be responsible for any transportation costs incurred in moving such Cars to the Sublessee's railroad tracks subsequent to the time of early termination. Sublessee shall, at Sublessor's option, provide, with respect to any Car described on any Schedule which is either on the Sublessee's railroad tracks at the time of early termination or is subsequently returned to Sublessee's railroad tracks, up to one hundred twenty (120) days free storage on its railroad tracks from either the date of early termination or the date the last Car on such Schedule is returned to Sublessee's railroad line subsequent to the time of early termination, whichever date is later.
- (ii) At the option of Sublessor, either Sublessee or a contractor chosen by Sublessor shall, at Sublessee's expense, remark the Cars as set forth in Subsection 10.C. of this Sublease. Sublessee shall not remove Sublessee's railroad marks from any Car without the prior written consent of Sublessor. After remarking, Sublessee shall, at Sublessor's option, use its best efforts to load the Cars with freight and deliver them to a connecting carrier for shipment.
- (iii) If some or all of the Cars are to be delivered to Sublessor at a location other than Sublessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by Sublessee. Sublessee shall bear the expense of remarking such Cars.

- C. Remarking, with respect to each Car, shall include the following: a) removal of existing mandatory markings and all company logos of Sublessee; b) complete cleaning subsequent to the removal of markings and company logos as designated by Sublessor; c) application of new mandatory markings and company logos; and d) any transportation involved in moving each Car to and from a suitable work area to perform the remarking set forth in this Section.

11. Indemnities

- A. SUBLESSEE SHALL DEFEND, INDEMNIFY AND HOLD SUBLESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION OR LIABILITY WITH RESPECT TO THE CARS WHICH IS OCCASIONED BY THE FAULT OF SUBLESSEE, OR WHICH OCCURS WHILE THE CARS ARE IN SUBLESSEE'S POSSESSION OR CONTROL, OR IN THOSE INSTANCES IN WHICH THE INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY FOR SUCH LOSS, DAMAGE, DESTRUCTION, OR LIABILITY TO SUBLESSEE.
- B. EXCEPT AS PROVIDED IN SUBSECTION 11.A., AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH SUBLESSEE SHALL BE RESPONSIBLE AS SET FORTH IN THIS SUBLEASE, SUBLESSOR SHALL DEFEND, INDEMNIFY AND HOLD SUBLESSEE HARMLESS AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF OR TO THE CARS, USUAL WEAR AND TEAR EXCEPTED, AND ANY CLAIM, CAUSE OF ACTION, DAMAGE, LIABILITY, COST OR EXPENSE WHICH MAY BE ASSERTED AGAINST SUBLESSEE WITH RESPECT TO THE CARS.

12. Representations, Warranties, and Covenants

Sublessee represents, warrants and covenants that:

- A. Sublessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and, insofar as is material to Sublessor's rights under this Sublease, has the corporate power, authority and, is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Sublease.
- B. The entering into and performance of this Sublease will not violate any judgment, order, law or regulation applicable to Sublessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Sublessee or on the Cars pursuant to any instrument to which Sublessee is a party or by which it or its assets may be bound, except as provided in Section 8 hereinabove.
- C. There is no action or proceeding pending or threatened against Sublessee before any court or administrative agency or other governmental body which might result in any material adverse

effect on the business, properties and assets, or conditions, financial or otherwise, of Sublessee such that Sublessee's ability to perform its obligations hereunder would be materially and adversely affected.

- D. There is no fact which Sublessee has not disclosed to Sublessor in writing, nor is Sublessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Sublessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Sublessee or the ability of the Sublessee to perform its obligation under this Sublease.

13. Inspection

Sublessor shall have the right to enter the premises where the Cars may be located at any time during normal business hours for the purpose of inspecting and examining the Cars to ensure Sublessee's compliance with its obligations hereunder.

14. Conditions of Itel Rail's Consent to Sublease

Itel Rail hereby gives its written consent for Sublessor and Sublessee to enter into this Sublease for the Cars described on Equipment Schedule No. 1 attached hereto which are subject to a Lease Agreement ("Agreement") dated March 8, 1979, between Itel Rail, as Lessor and Sublessor, as Lessee. Itel Rail's consent hereunder is specifically conditioned on Sublessor's and Sublessee's agreement hereunder that: (1) Sublessor shall remain primarily liable for the payment of the rent set forth in the Agreement and for the performance of all the other terms of the Agreement to be performed by the Sublessor; (2) this Sublease is subject and subordinate to the rights of Itel Rail under the Agreement and any amendment or modification thereof; and (3) during this Sublease, any reference to Sublessor under the Agreement with respect to any of Sublessor's obligations or any of Itel Rail's rights (but not Sublessor's rights) shall also include Sublessee.

15. Miscellaneous

- A. This Sublease and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that Sublessee may not without the prior written consent of Sublessor, or Sublessor without the prior written consent of Itel Rail, assign this Sublease or any of its rights hereunder or sublease any Cars to any party, and any purported assignment or sublease in violation hereof shall be void.
- B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Sublessor or its assignees in connection with the acquisition or financing or use of the Cars in order to confirm the financing parties'

interest in and to the Cars, this Sublease and Schedules hereto and to confirm the subordination provisions contained in Section 8 of this Sublease.

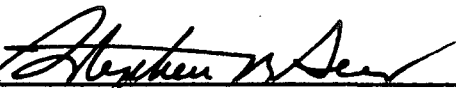
- C. It is expressly understood and agreed by the parties hereto that this Sublease constitutes a lease of the Cars only and no joint sale or venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Sublessee any right, title or interest in the Cars, except as a Sublessee only.
- D. No failure or delay by Sublessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Sublessor nor shall any waiver or indulgence by Sublessor or any partial or single exercise of any right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- E. This Sublease shall be governed by and construed according to the laws of the State of California and jurisdiction of any action with respect to the Agreement shall be in the courts located in California.
- F. Sublessee shall notify Sublessor as soon as is practicable of any accident connected with the malfunctioning or operation of the Cars, including in such report, where available, the time, place and nature of the accident and the damage caused.
- G. Sublessee shall also notify Sublessor in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car.
- H. Sublessee shall furnish to Sublessor promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.
- I. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, or when transmitted and received by telex, addressed to the president of the other party at the address set forth herein or at such other address as to which any party shall notify the other party.
- J. The obligations and liabilities of Sublessor and Sublessee hereunder shall survive the expiration or earlier termination of this Sublease.
- K. Any provision hereof to the contrary notwithstanding, the Sublease and the grant of any rights and privileges to the Sublessee hereunder, are hereby made subject and subordinate to the title and rights of The Connecticut Bank and Trust Company, as trustee and lessor (the 'Prime Lessor'), under the Lease of Railroad

Equipment dated as of May 1, 1979 (the 'Prime Lease') between the Prime Lessor and IteI Corporation. Accordingly, it is understood that the Sublease may be terminated by the Prime Lessor and its successors and assigns, upon the occurrence of an Event of Default under the Prime Lease.

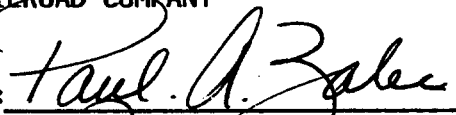
- L. This Sublease represents the entire Sublease. This Sublease shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease as of the date first above written.

GREEN BAY & WESTERN
RAILROAD COMPANY

By: 
Title: President
Date: 12-22-86

McCLOUD RIVER
RAILROAD COMPANY

By: 
Title: PRES.
Date: 12/8/86

STATE OF Wisconsin)
COUNTY OF Brown) ss:

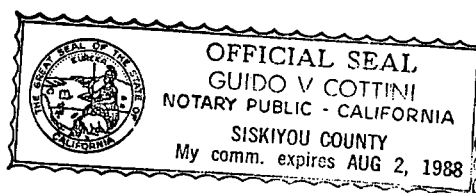
On this 22nd day of December, 1986, before me personally appeared Stephen B. Selay, to me personally known, who being by me duly sworn says that such person is President of GREEN BAY & WESTERN RAILROAD COMPANY, that the foregoing Sublease was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Francis L. Renard
Notary Public
FRANCIS L. RENARD
NOTARY PUBLIC STATE OF WISCONSIN
My Commission Expires Sept. 27, 1987

STATE OF California)
COUNTY OF Siskiyou) ss:

On this 8th day of December, 1986, before me personally appeared Paul A. Zalec, to me personally known, who being by me duly sworn says that such person is President of MCCLLOUD RIVER RAILROAD COMPANY, that the foregoing Sublease was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Guido V. Cottini



EQUIPMENT SCHEDULE NO. 1

Itel Rail Corporation hereby leases the following Boxcars to McCloud River Railroad Company subject to the terms and conditions of that certain Sublease Agreement dated as of _____, 198__.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions Inside		Height	Doors Width	No. of Cars
				Width				
XP XXX	70-ton Boxcar purpose Boxcar Plate C Lading anchors, continuous	MR 178882- 178956	50'7"	9'6"		11'	10' Plug	75

GREEN BAY & WESTERN
RAILROAD COMPANY

By: *Stephen V. Sen*

Title: *President*

Date: *12-15-86*

McCLOUD RIVER
RAILROAD COMPANY

By: *Paul A. Zake*

Title: *PRES.*

Date: *12/8/86*

STATE OF Wisconsin)
COUNTY OF Brown) ss:

On this 15th day of December, 1986, before me personally appeared Stephen A. Selby, to me personally known, who being by me duly sworn says that such person is President of GREEN BAY & WESTERN RAILROAD COMPANY, that the foregoing Equipment Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Francis L. Renard
Notary Public

FRANCIS L. RENARD
NOTARY PUBLIC STATE OF WISCONSIN
My Commission Expires Sept. 27, 1987

STATE OF California)
COUNTY OF Siskiyou) ss:

On this 8th day of December, 1986, before me personally appeared Paul A. Zalec, to me personally known, who being by me duly sworn says that such person is President of McCLOUD RIVER RAILROAD COMPANY, that the foregoing Equipment Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Guido V. Cottini
Notary Public

